

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

CSX TRANSPORTATION, INC.,
individually and on behalf of NORFOLK
& PORTSMOUTH BELT LINE
RAILROAD COMPANY,

Plaintiff,

v.

Civil Action No. 2:18-cv-530-MSD-LRL

NORFOLK SOUTHERN RAILWAY
COMPANY, *et al.*,

Defendants.

_____ /

JOINT MOTION TO CONTINUE STAY DUE TO COVID-19

Plaintiff CSX Transportation, Inc. (“CSXT”), and Defendants Norfolk Southern Railway Company (“NS”), and Norfolk & Portsmouth Belt Line Railroad Company (“NPBL”) (collectively, the “Parties”), by counsel, and pursuant to Rule 16(b)(4) of the Federal Rules of Civil Procedure, hereby jointly move this Court to continue the stay in this case until August 19, 2020, due to the impact of COVID-19 on the United States. In support of this Motion, the Parties respectfully state:

1. On March 17, 2020, the Parties moved the Court to stay the case and vacate the pending deadlines, including trial, established by the Court’s Scheduling Order of October 25, 2019. *See* ECF Nos. 157, 78.

2. Although certain discovery was complete as of March 17, 2020, the Parties were coordinating and making arrangements to conduct depositions across the country, including in Georgia, Florida, Texas, and Virginia, between March 18, 2020 and March 31, 2020.

3. Due to the coronavirus and COVID-19 pandemic, certain of the Parties and their counsels' law firms imposed business travel restrictions on their employees and visitation bans as to non-employees until further notice. As of the date of this Motion, these restrictions and bans substantively remain in place with no firm timeframe for loosening policies for contact between personnel and outsiders.

4. In addition, the Court also entered several General Orders, postponing and continuing all civil in-person proceedings through June 10, 2020, and extending certain filing deadlines. *See* General Orders 2020-7, 2020-12, and 2020-16. Currently, all civil jury trials are postponed indefinitely. General Order 2020-16(6).

5. By Order dated March 19, 2020, the Court stayed the case for thirty (30) days and vacated all existing deadlines, including trial, pending rescheduling. *See* ECF No. 160. The Parties were directed to submit a status report to the Court with recommendations and a request for a telephonic status conference with the Court on or before April 16, 2020. *See id.*

6. Thereafter the Parties requested, and the Court granted, several additional thirty (30) day stays based on existing conditions due to the impact of COVID-19, with the most recent stay expiring on July 20, 2020. *See* ECF Nos. 164, 173, 191.

7. Since the Court issued the initial stay, the national and statewide COVID-19 situation worsened. On March 19, 2020, there were 13,865 reported cases of COVID-19 in the United States with 206 reported deaths. As of July 17, 2020, the United States has had over 3,751,000 reported cases of COVID-19 with over 141,000 deaths.¹

¹ United States: Coronavirus Cases, WorldoMeter, <https://www.worldometers.info/coronavirus/country/us/> (last visited July 17, 2020).

8. Unsurprisingly, states across the country, including where counsel reside, took stringent measures to limit the spread of the pandemic, including Virginia Governor Ralph Northam's Executive Order No. 55 on March 30, 2020, "direct[ing] all Virginians to stay home except in extremely limited circumstances," such as seeking medical attention or obtaining goods or services like groceries or prescriptions.² This Stay at Home Order was set to be effective through June 10, 2020, unless rescinded earlier.

9. Subsequently, Governor Northam issued Executive Order 61, allowing most of Virginia to enter into Phase One on May 15, 2020, with the City of Richmond and the County of Accomack entering Phase One two weeks later.³ Governor Northam subsequently issued Executive Order 65, allowing most of Virginia to enter into Phase Two as of June 5, 2020, with Richmond and Northern Virginia entering Phase Two on June 12, 2020.⁴ Virginia entered Phase Three of reopening on July 1, 2020.⁵

² See *Governor Northam Issues Statewide Stay at Home Order*, Office of the Governor (Mar. 30, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/march/headline-855702-en.html>.

³ See Executive Order 62, *Jurisdictions Temporarily Delayed from Entering Phase One in Executive Order 61 and Permitted to Remain in Phase Zero* (May 14, 2020), <https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-62-and-Order-of-Public-Health-Emergency-Four-AMENDED.pdf>

⁴ See *Governor Northam Announces Phase Two Guidelines to Further Ease Public Health Restrictions*, Office of the Governor (June 2, 2020), <https://www.governor.virginia.gov/newsroom/all-releases/2020/june/headline-857141-en.html>.

⁵ See Executive Order 67, *Phase Three Easing of Certain Temporary Restrictions Due to Novel Coronavirus (COVID-19)* (June 30, 2020) [https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-\(COVID-19\).pdf](https://www.governor.virginia.gov/media/governorvirginiagov/executive-actions/EO-67-and-Order-of-Public-Health-Emergency-Seven---Phase-Three-Easing-of-Certain-Temporary-Restrictions-Due-to-Novel-Coronavirus-(COVID-19).pdf)

10. Most recently, Governor Northam has directed state health officials to enhance enforcement procedures due to the resurgence of COVID-19 cases in the Hampton Roads area.⁶

11. At this time, counsel have continued teleworking, whenever possible, and the offices for most of the parties and their counsel remained closed.

12. In accordance with the Court's previous stay orders, counsel have continued to engage in discovery-related matters, including conducting meet and confer conferences regarding discovery disputes, filing and briefing discovery-related motions, holding conference calls to identify remaining witnesses to depose once the parties lift COVID-19 travel restrictions on their employees, and discussing the scheduling of those depositions. The Parties also have filed documents with the Court regarding motions that have been withdrawn as moot following the COVID-19 stays.

13. In light of the impact of the ongoing COVID-19 pandemic, the Parties propose that until a clearer picture exists in the short term, the Court stay all litigation deadlines in this case an additional thirty (30) days, to August 19, 2020. During this time, the Parties jointly request that they may continue supplementations, conferrals, and motions practice regarding written fact discovery, document discovery, and third-party discovery not requiring in-person activity.

14. This is a joint request from the Parties and, therefore, extending the stay will not prejudice any Party.

15. This request is submitted in good faith and is not intended to cause unnecessary burden, delay or needless expense.

⁶ *Northam orders stronger enforcement of state COVID restrictions*, WFIR (July 14, 2020), <https://wfirnews.com/news/northam-orders-stronger-enforcement-of-state-covid-restrictions>.

16. This request is in keeping with the Court's orders, including General Order 2020-12, dated April 10, 2020, and General Order 2020-16, dated May 26, 2020, continuing all civil jury trials indefinitely.

17. For the foregoing reasons, the Parties submit good cause exists to stay this case for an additional thirty (30) days, until August 19, 2020, pending rescheduling of all deadlines.

WHEREFORE, Plaintiff CSXT, Defendant NS, and Defendant NPBL, respectfully request that the Court grant this Joint Motion and enter the attached Proposed Order. The Parties attach as **Exhibit 1** an electronically endorsed copy of their Proposed Order.

Dated: July 20, 2020

Respectfully submitted,

NORFOLK SOUTHERN RAILWAY COMPANY

/s/ Michael E. Lacy

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Counsel for Norfolk Southern Railway Company

CERTIFICATE OF SERVICE

I certify that on June 20, 2020, a true and correct copy of the foregoing was served on all counsel of record via Notice of Electronic Filing by filing with the Court's CM/ECF system.

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